

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

THOMAS JAMES GRIDER, )  
v. )  
Plaintiff, )  
v. ) 2:12-cv-02674-WMA-JEO  
KIM TOBIAS THOMAS, et. al., )  
Defendants. )

## MEMORANDUM OPINION

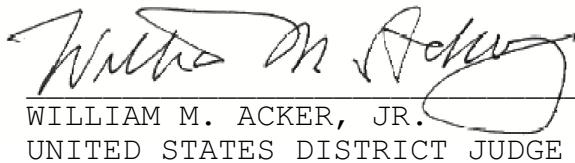
The magistrate judge filed a report and recommendation on May 6, 2013, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed under 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted, or seeking monetary relief from defendants who are immune. The plaintiff did not file objections to the report and recommendation, but on May 29, 2013, filed a motion for voluntary dismissal accompanied by a request that the payments of the filing fee no longer be withdrawn from his account. (Doc. 10).

Although the plaintiff initially styled his pleading as a Petition for Writ of *Habeas Corpus*, because the claim raised and relief sought therein did not concern the legality of the plaintiff's custody, or the execution of the sentence, the plaintiff was advised that the petition would be construed as a § 1983 action, which required a filing fee of \$350.00. The plaintiff was informed that to proceed with this action, he must either file a new application to proceed *in forma pauperis* ("IFP") or pay the filing fee of \$350.00. The plaintiff filed a new IFP application, and was subsequently advised that his obligation to pay the filing fee in full would remain in full force and effect, notwithstanding any dismissal or termination of the lawsuit, until the full filing fee of \$350.00 has been paid. The payment of the remainder of the filing fee can not be waived by the dismissal

of this action, and the rational of 28 U.S.C. § 1915(a) and (g) would not be served by granting the plaintiff's motion for voluntary dismissal. *See, Wilson v. Freesemann*, 2007 WL 2083827 (S.D. Ga. 2007) (holding that 28 U.S.C. § 1915(a) prevents [a prisoner] from avoiding a 28 U.S.C. § 1915(g) 'strike' merely by exploiting Rule 41(a) in the face of an adverse Report and Recommendation).

Thus, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. Further, the plaintiff's motion for voluntary dismissal (doc. 10) is due to be DENIED. Accordingly, the complaint is due to be dismissed pursuant to 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted, or seeking monetary relief from defendants who are immune. A Final Judgment will be entered.

DATED this 5th day of June, 2013.



WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE